No. 11572

IN THE

United States Circuit Court of Appeals

For The Ninth Circuit

WILLIAM B. EDWARDS, BEN WHITE, ARCH ROBINSON, LEE WELLS, ARCH J. MCLAREN, ARTHUR D. BARKELEW, OSCAR CLAYTON, ROBERT L. CULPEPPER, ESTATE OF CHARLES E. WELLS (by Lee Wells), ESTATE OF WILLIAM S. WELLS (by Harley Wells), ESTATE OF JOHN MCLAREN (by Arch J. McLaren), and the ESTATE OF THEODORE BOWEN (by William B. Edwards),

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appellant's Petition for Rehearing

WILLIAM B. EDWARDS,
Seeley, California,
Appellant in Propria Persona.

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Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S PETITION FOR REHEARING

To the Honorable Judges of the above entitled Court:

The Appellants in the above entitled case petition the court to grant a rehearing of the appeal on which opinion was rendered August 4, for the reason (1) the opinion makes known that items vitally important

to the appeal and which were requested to be included in the transcript, were not included, and it is evident if they had been included the opinion rendered would have been different. And (2) rehearing should be granted for the further reason that the claims of the Appellants are founded on the fifth amendment to the Constitution which both Congressmen and judges of courts are sworn to uphold, and no specific law of Congress need be passed to give the court jurisdiction.

Concerning item (1) the opinion states: "Complaint is made by Appellant of the failure of the trial court to dismiss the complaint so that jurisdiction under the Federal Tort Claims Act could be invoked. We find no record of any such request being made to the trial court. In any event such permission could not have assisted Appellants. Said Act permits recovery only upon claims accruing on and after January 1, 1945."

So said defense attorneys. But in his reply brief Appellant quoted from the debates in passing that Act, where it was stated that claims accruing BEFORE that "on and after" date could be validated by the judiciary committee, and that no claims would be barred. The reply brief made known much other information concerning this and other restrictions plead by defense attorneys, with

page reference to the Congressional Record where it could be checked, which information does not appear to have been read by the opinion writer, the positive assertions of defense attorneys being accepted without question.

The court should bear in mind that the scandalous conduct of department attorneys in this case is the basis of this action, and such attorneys—whether or not participants in that scandal—have ever since evidenced a determination to keep that scandal covered up. It was they that ganged up to the President—exparte—and by false representations, secured the veto of a bill that would have settled this case years ago. (See pages 16-20 in brief entitled: "In the Court of Sovereign Pleas.") And they have ever since taken care that no other bill concerning this case got past the committee chairmen.

Now let's see if there is record evidence that motion to dismiss the complaint without prejudice was made to the trial court, and if in any event such dismissal could have assisted Appellants.

The first request to so dismiss was made orally and does not appear to have been recorded. But on page 24 of the transcript Appellant is recorded as writing from San Bernardino that: "In the matter of the much

delayed motion to dismiss the complaint in this case, now set for Dec. 16, the Acting Plaintiff is sorry to say he will not be able to appear at that date, * * * and he hopes his motion to dismiss the complaint without prejudice need not be further delayed.

"But please be advised that this plaintiff —health and high water permitting—will certainly appear at the next motion day to file a new complaint, and to get a 'show cause' order signed by the court, to be served on the (Chairman of) the judiciary committee of Congress by U. S. Marshals with the new complaint."

Here is record evidence of request to dismiss the complaint without prejudice and the reason for it. But the opinion asserts there could be no such reason. So let's explore that.

In the petition for appeal (page 30 of transcript) Appellant is quoted as writing to the clerk: "Whether or not the court had jurisdiction under the complaint dismissed is now a 'moot' question that need not be considered. The question to be considered on appeal is, would the court have had jurisdiction under the new petition, (called a petition because copies were intended to be served on committees of Congress) if the former complaint had been dismissed without prejudice instead of with prejudice."

And the next paragraph in the transcript contained request to include the new (petition) in the record, which it is seen the clerk did not. Therefore the prayer only of that petition will be here quoted:

WHEREFORE the plaintiffs pray that the court will hear this case, and will determine if what department officials did to these plaintiffs was done in good faith law enforcement, or for the partisan purpose of securing for adversaries and by criminal process, a possession and an advantage they could not secure by civil and due process. And that the court will determine the detriment and damage imposed upon the plaintiffs by such official action if no lawful reason is found therefor, first requesting the judiciary committee of Congress to show cause if any there be why judgment should not be made in this case, and making known that if no judicial reason for not so doing is made known to the court within 30 days after service of this notice, the court will assume there is no such reason, and will enter judgment according to the facts found and determined.

Such was the prayer of the new petition. No judgment was proposed to be made until and unless the committee of Congress now passing on the "residue" claims for the Fed-

eral Tort Claims Act, being advised of the material facts, found no judicial reason for not so doing. If any change could make this prayer more acceptable to the court, such change would be made, but the implication of the opinion is that no possible change could assist the Appellants.

This may be on the assumption that if Appellant's district Congressman—who is and alway was allied with the Appellant's enemies—will not lift a finger for the Appelants, the courts will not lift a finger for them either, and the long continued discrimination against them has become a judicial as well as a political matter.

In this event the only alternative left this plaintiff to get justice for his victimized former neighbors is to defeat the district Congressman at the next election. It would not be easy to make such a campaign at 86, but he would have help. Then after the election and before he could take his seat, other Congressmen—prompted by department attorneys so to do—would start the chorus: You were convicted of a conspiracy and forever deprived of the right to hold any office of profit or trust under the Government.

This would be very welcome, for at long last the under cover work of department attorneys would be brought out in the open,

every paper in the land would print it, and the court of Public Opinion would take jurisdiction.

Concerning item (2) as a reason for rehearing, it is sad to say that although both Congressmen and judges of courts are sworn to uphold the Constitution—which of course includes the rights of citizens under the Constitution—both Congress and the courts have come to ignore such rights of citizens except as some law of Congress would provide the specific consent of Congress in each individual case, in direct disregard of constitutional provisions, and in disregard also of the legal fact stated by the Supreme Court in *Huertado vs. California*, (110 U. S. 516-535) quoted on page 16 of opening brief, that "law *must not be* a special rule for a particular person or a particular case," which is just what the "consent of Congress" is and all it is concerning court jurisdiction.

So it may be a waste of time to argue to the court that the Constitution is the supreme law of the land, and no specific law of Congress is needed to give the courts jurisdiction when citizens are deprived of their liberty and their property without due process.

Defense attorneys will say there WAS due process—there was a trial. Yes. But it is

not "due process" to use criminal process to settle civil controversies, and the conspiracy of department attorneys to charge a criminal conspiracy against these Appellants was successful because the real conspirators were *not* on trial, and because they could and did use the great power of the government against these Appellants for a partisan purpose and at a time when Appellants were powerless to defend themselves. But the right of department attorneys to subject citizens to such trial for such purpose is a direct issue in this case, and Appellants are entitled to a hearing on that issue regardless of any other considerations.

Concerning the defense theory—so far accepted by the courts—that the "statute of limitations" is a bar to this action, it should be said that no statute of limitations can apply in any case where the plaintiffs are prevented by the defendant from filing suit, and this judicial theory applies with equal force to the "on and after" restrictions plead by defense attorneys to bar this case from the provisions of the "tort" law.

Never has there been a time when these Appellants were free from the non-consent of Congress to prosecute this case, and never has there been a time since proceedings to "reimburse" the Edwards adversary were

started that this Appellant has not made every possible effort to get that non-consent removed, and never has there been a proper or judicial reason for not vacating that non-consent made known, as the court should take judicial notice, the real and only reason being that the wrong doers in this case don't want that non-consent removed.

In this connection it would be well for the court to consider the judicial action of this court in the case of *Edwards vs. Bodkin*, (249 Fed. 562) where Judge Warren was the opinion writer. The first consideration of this court then appeared to be to administer justice, and when the specific letter of the law was insufficient to provide justice, the court supplied the sufficiency.

The opinion in that case held that a homestead entry (on desert land) could not be contested for abandonment where the entryman was hindered, delayed or prevented from getting water to reclaim the land. After trial and judgment in the district court, Bodkin's attorneys, (ex-department attorneys) argued all day in a rehearing in which they repeated over and over that the law cited by Judge Warren applied ONLY to desert claims, and did NOT apply to homestead claims (similar to the "on and after" restriction here plead by defense attorneys).

And they repeated that argument on appeal to this ocurt.

But they got no chance to repeat that argument to the Supreme Court, for that court dismissed their appeal without argument on motion of your humble servant under the rule that the appeal raised no real question for the court to decide.

It was very true that the law in question specified desert claims and made no mention of homestead claims. But as a matter of justice this court then held that there could be no reason to distinguish between a homestead entry on desert land, and a desert entry, and as a matter of fact, there was much more reason for the law to apply to homestead than to desert entries. But such reasons for judicial action may be out-moded in present practice.

The opinion states that under a special Act of Congress Bodkin's heirs were awarded some $30,000 on the theory they were damaged in that amount by reason of the invalid patent issued to Bodkin. This excuse for an inexcusable act appears to have been taken from the brief of defense attorneys. By no conceivable circumstance could Bodkin—or the heirs—be damaged by the issue of a patent. This "reimbursement" of a defeated litigant for his judicial defeats was purely an

arbitrary act which Congress had no Constitutional authority to do. Not only so, but in this case it was heaping injustice on injustice by indemnifying the loser in a long drawn out legal contest where the losing side was given the free aid of the great power of the government, while the other side was given every possible obstruction by government officials and attorneys.

The question now is, with the facts made known, will the courts uphold such partisan and unconstitutional use of government power? This court did not uphold injustice in Judge Warren's day, and we hope it will not do it in Judge Orr's day.

In the reply brief Appellant quoted the Supreme Court as long ago as 1884 in the case of *Langford vs. The United States* (110 U. S. 342) as holding on the doctrine of the immunity from suit, that: "neither in reference to the United States, or the several States, or any of its officers has the English maxim any existence in this country."

And in *Marbury vs. Madison*, (5 U. S. 157) quoted in the green backed brief filed in this case, the Supreme court said:

"The very essence of civil liberty consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of the Gov-

ernment is to afford that protection. In Great Britain the King himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of the court. The Government of the United States has been emphatically termed a government of laws and not of men. It will certainly cease to deserve that high appellation if the laws furnish no remedy for the violation of vested rights."

Now the opinion in this case quotes other supreme court decisions in a way that would indicate that the English maxim had been made into a United States maxim, and also that U. S. officials other than judicial officials were properly exercising more sovereign and irresponsible power than the King of England ever did. But with all due respect for the Supreme Court, it should be repeated that the Constitution is the supreme law of the land, and the Constitution provided no basis for the exercise of royal and irresponsible power.

In this connection the opinion of Judge Madden in the case of *Lovett, Dodd and Watson* (quoted on page 17 of opening brief), concerning the power of Congress to control court action, etc., is pertinent to this case. Judge Madden there said:

"It may well be that under our Constitu-

tion, or under any constitution devised by a free people, that one branch of the government might, temporarily at least, subvert the government. The judges might refuse to enforce laws and convict criminals. The President might order the Army and Navy to surrender to the enemy. Congress might refuse to raise money to pay the President and the judges of the courts. But any of these imagined acts would not be taken pursuant to the Constitution, but would be acts of subversion and revolution, the acts of mere physical power, not lawful authority."

Insisting on a "sovereign" right to prejudge judicial questions for the courts, dictating that the courts must uphold the unlawful acts of certain individuals, but must not protect the constitutional rights of certain other individuals, that Bodkin and his kind for instance, must have every thing THEY want regardless of the courts, while Edwards and other adversaries of the Bodkin clan must not be permitted access to the courts—these are not imagined acts" but are routine practice under the "consent" policy of Congress, and are not "pursuant to the Constitution," but ARE the acts of "mere physical power—not lawful authority.

In this connection the "conclusion" of a committee of Congress where similar—but

much less drastic action—was taken by executive officials in another case, is pertinent to this case. In that case a Federal Home Loan bank at Long Beach was closed "without notice and without cause, for the purpose of reprisal and intimidation" as disclosed to the committee. (Cong. Rec. May 6, 1947, Page A2212)

CONCLUSIONS OF COMMITTEE

"The action here complained of was not only a disservice to the Government, it was also a disservice to the people for the protection of whose rights and affairs our Government exists. Should the time ever come when our Government is incapable of discharging that fundamental function, it must cease to exist in the form and for the purpose for which it was founded. The same end is inevitable for any endeavor with which the Government is identified. The necessity for unquestioned rectitude of purpose and sound, just and impartial administration of government endeavor is paramount."

Such was the conclusion of the investigating committee of Congress where no one was arrested and no property confiscated, but merely made inactive. Could that "endeavor" be less "paramount" where citizens were imprisoned and their homes and possessions freely given to others? And as the "protec-

tion of the rights and affairs of the people for which our Government exists" is the duty of the judicial branch, how can this "fundamental function" be exercised when that branch declares itself impotent by pleading "no jurisdiction."

Under this set up it appears that "our Government (became) incapable of discharging (its) fundamental function" years ago, and has therefore "ceased to exist in the form and for the purpose for which it was formed.

However, under the prayer of the new petition the American version of the English maxim would be unruffled, and the formal consent of Congress could still function if Congress and the courts both insist on such functioning, however unAmerican it may be.

But it will take a mandate of this court to get the district court interested in this case, and it is respectfully suggested that the mandate should direct the district court to have a pretrial, to find what material facts defense attorneys will admit and what will require proof pending reply to the "show cause" order or request to the committees of Congress, as such admissions and proofs may be necessary to spur the committees to action.

Humbly and respectfully,
WILLIAM B. EDWARDS

State of California

S.S.

County of Imperial

The co-appellant and administrator above named hereby certified that in his judgment the foregoing petition for rehearing is well founded, that it is not taken for delay, that the prayer quoted therein is correctly quoted, and that three copies of this petition will be mailed to defense attorneys at the Federal Bldg., Los Angeles, as soon as printed.

WILLIAM B. EDWARDS

Subscribed and sworn to before me this 19th day of August, 1947.

CARROLL C. CAMPBELL
Notary Public in and for the County of Imperial, State of California.

My Commission Expires May 18, 1951